IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1974 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

AHMEDALI MOHAMMEDALI SAIYED

Versus

ABDULRASHID KALUBHAI SHAIKH

Appearance:

MR SK BUKHARI for Petitioner

MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/07/98

ORAL JUDGEMENT

This is tenant's revision under Section 29(2) of the Bombay Rent Act (for short "the Act").

2. Brief facts are that the revisionist was tenant of a room of the respondent on a monthly rent of

Rs.10/p.m. The rent fall due from 1.10.1971 till 31.8.1975. Notice of demand and eviction was served, but within one month of service of notice neither any reply was given nor demand made in the notice was paid to the landlord respondent. No dispute regarding standard rent was also raised during this interval of one month. Consequently the suit for eviction was filed. It was averred by the plaintiff - respondent that the defendant revisionist had constructed permanent tiled structure on the common passage in front of the tenanted room and this common passage was to be used by other tenants as well. Accordingly, Suit for eviction, recovery of arrears of rent and mesne profits was filed.

3. The Suit was resisted by the revisionist contending that he is tenant of two rooms and otala. In the written statement he raised disputes regarding standard rent. According to him he was tenant on Rs.3/p.m. and the rent at the rate of Rs.10/- p.m. claimed by the plaintiff is excessive. He further pleaded that in 1970 due to the flood most of the tenanted portion was damaged. Accordingly with the agreement from the landlord respondent repairs were carried out in which the revisionist spent Rs.480.58 p. He claimed adjustment of this amount, as against three years' arrears of rent amounting to Rs.360/-. In this way he pleaded that he was not in arrears of rent for more than six months. The suit was decreed by the trial Court holding that the revisionist was not entitled to adjustment of the amount spent on repairs because there was no written agreement between the parties and no notice in writing was given by the revisionist to the respondent for carrying out repairs.

4. An Appeal was preferred which too was dismissed. Hence, this revision.

5. Having heard the learned Counsel for the parties at length only two points have to be determined, viz. whether the landlord is entitled to decree for eviction under Section 12(3)(a) of the Act and that whether under Section 23 of the Act the tenant is entitled to adjustment of the amount spent for repairs.

6. So far as applicability of Section 12(3)(a) of the Act is concerned the two courts below have concurrently recorded finding that the tenant was in arrears of rent for more than six months. Notice of demand was served on him, but he failed to reply or comply with the same within a period of one month of service. It was also found by the two Courts below that

no dispute regarding standard rent was raised by the revisionist within a month of service notice of demand and that the dispute of standard rent raised in the written statement was malafide and not bonafide.

7. On the point of tenant's claim for adjustment of the cost of repairs the two courts below found that in the absence of written agreement the tenant is not entitled to adjustment of the amount spent on repairs and further in absence of written notice served on the landlord the tenant could not carry out repairs nor could claim adjustment.

8. The findings of the two Courts below that there existed no dispute rather bonafide dispute regarding standard rent between the parties is concluded by concurrent finding of fact and requires no interference in this revision.

9. The only thing to be seen is whether the tenant was in arrears of rent for more than six months and whether he is entitled to adjustment of the amount spent on repairs.

10. The two courts below were wrong in ignoring and misinterpreting Section 23(1) of the Act for holding that there should have been written agreement between the landlord and the tenant. Section 23(1) of the Act simply provides that notwithstanding anything contained in any law for the time being in force and in absence of an Agreement to the contrary by the tenant every landlord shall be bound to keep the premises in good and tenantable repairs.

11. Thus, under Section 23(1) the legislature never intended that there should be written agreement between the parties. The Agreement mentioned in Section 23(1) refers to agreement to the contrary by tenant which means if the tenant agreed to undertake upon himself the liability to keep the premises tenantable and fit he could not claim adjustment of amount spent on repairs. Thus, the view of the two courts below that the Agreement should be in writing is contrary to law and has to be ignored. Even oral agreement is sufficient.

12. However, Section 23(2) of the Act provides that if the landlord neglects to make any repairs which he is bound to make under sub.Section (1) within a reasonable time after the notice is served upon him by post or in any other manner by a tenant....., such tenant may make repair himself and deduct the expenses of such

repairs from the rent or otherwise recover them from the landlord.

13. In order to apply the provisions of Sub.Section 2 of Section 23 of the Act, two things are necessary. The first is that the repair is intended in the accommodation let out to the tenant and the second is that the landlord has neglected to carry out repairs. If under these circumstances the tenant served a written notice on the landlord and the landlord failed to carry out repairs the tenant can get repairs done at his cost and claim adjustment of the same from the rent from the landlord or may recover the same otherwise from the landlord.

14. From the plaint allegations it appears that the so called permanent structure in the nature of tile shed was raised in the common passage which was meant for the use of all the tenants. Thus, the structure was not raised in the tenanted portion and hence the tenant is not entitled to any adjustment much less Rs.482.58 ps. on this score.

15. Secondly it is admitted case of the revisionist that no written notice was served in any other way or by post upon the landlord asking him to carry out the repairs. In the absence of service of such notice the tenant is not entitled to claim adjustment of amount voluntarily spent by him in raising tiled permanent structure on the common passage which was exactly not a portion in the tenancy of the revisionist.

16. Additional evidence was also proposed to be given in Appeal which was rightly refused by the lower Appellate Court. Consquently merely by filing three vouchers showing expenditure on repairs the tenant is not entitled to adjustment for the reasons given above.

17. If the tenant is not entitled to adjustment of Rs.482.58 ps. obviously the arrears of rent amounting to Rs.482/- and the arrears within limitation came to Rs.360/- only. In this view of the matter the tenant was in arrears of rent exceeding six months which he failed to pay within a month of service of notice of demand on him.

18. The two courts below have rightly concluded that the tenant was not entitled to relief against eviction because which he was not ready and willing to pay the rent and was irregular in making payment. In this view of the matter the two courts below were justified in holding that the revisionist was not entitled to the

protection of Section 13(3)(b) of the Act.

19. The Judgments and Decrees of the two courts below being in accordance with law no interference is called for in this revision. The revision is thus without merit and is bound to fail.

The revision is hereby dismissed. Rule discharged. Ad.interim relief vacated. No order as to costs.

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